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May 17, 2010

Ms. Mary Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: Comments on Proposed Rule on Fiduciary Duties at FCUs; Mergers and Conversions of Insured Credit Unions

Dear Ms. Rupp and Members of the NCUA Board:

I am writing on behalf of the Board of Directors and management team of Visions Federal Credit Union which is headquartered in Endicott, New York and serves 124,000 members in southern New York and northern Pennsylvania.

The biggest difference between a credit union and a bank is the existence of our volunteer directors, chosen and elected from the membership to represent them in the financial cooperative. I have had the honor to serve with many different directors in my 30 years as a president of a credit union, and although every one of them brought a different viewpoint and skill set to the board room, the one thing they all had in common was their desire to represent their fellow employees and community through volunteer service at the credit union. They have also understood that as volunteers, the credit union would protect them financially for the decisions they made, and that they had one employee – the President/CEO.

Your new proposed rule on fiduciary duties threatens the status of volunteers at credit unions throughout the country and also threatens to drive a wedge between the CEO and the staff by legislating that the board can have staff report directly to them if used in a support role. You are also insisting on some nebulous level of knowledge in 90 days for a new director that will be left up to your examiners to determine. Additionally under your new rule, any decision to merge, convert to private insurance, or convert charters is an action that would not be covered by the bond or indemnification if a board member or management official is sued since this would constitute an action that affects the members' interests. The matter of whether or not the decision constitutes "gross negligence" should be left up to the lawyers.

**This is a proposed rule that will dissuade many future volunteers from running for Board positions at federal credit unions and needs to be withdrawn immediately**. Your additional restrictions on mergers and conversions also need to be rethought because of their lack of practicality.

Our specific comments:

**Fiduciary Duties of FCU Board of Directors**

Overall comment – we would prefer a federal regulation rather than state law; however, the proposed NCUA regulation as written is not as thorough as New York State Corporate Responsibility law and therefore too open to interpretation and abuse.

**701.4(a)**

We do not agree with new language that states that the ultimate responsibility of each FCU's board of director's management is non-delegable, and believe the previous language concerning general direction and control of the affairs of the credit unions speaks more accurately concerning the strategic and policy making role of a board of directors.

**701.4(b)1**

We have no objection to the language concerning carrying out duties in "good faith" as proposed.

**701.4 (b) 2**

We have no objection to the language concerning the directors' administering the affairs of the credit union fairly and impartially.

**701.4(b) 3**

**We object to this paragraph** since it provides no objective measure of how a director will be deemed sufficiently trained in a credit union's balance sheet and income statement after three months on the job. As we have seen with other topics such as BSA, if approved, this section will lead to interpretation from individual examiners that will vary and result in DORs and LUAs because in some cases an individual examiner may, for example, require a line by line explanation by each director of the balance sheet and another examiner might simply check to see if training has occurred. If you insist on this requirement we suggest as an alternative that every director receive financial training within one year of being elected. This can be easily tracked and reported.

**701.4(c)**

**This change needs to be eliminated**.

In this change you state that "Federal ***credit union staff providing services to the board of directors or any committee of the board ...may be required by the board... or committee to report directly to the board or committee..."*** This not only usurps the CEO's authority over his or her staff, but threatens the efficiency of a credit union by putting the staff at the beck and call of the board of directors and committees. The alternative will be to increase expenses at credit unions by hiring full time staffs to support the board functions so that credit union staff is insulated and can go about their main work of serving our members.

**701.4(d)**

No objections

**701.33**

**We object to this change in indemnification and changing the standard credit union bylaw**. As mentioned earlier, if the test is simply that an attorney can find an official or board member guilty of an aggravated breach of the duty of care because it affected a member's rights and financial interests, almost any major decision made by the board and the staff could be considered a breach of someone's rights, and the board member or official would not be covered by the indemnification – even if the decision was made with careful planning, research, and for the betterment of the credit unions as a whole or its future. This is a hole a small truck could drive through and invites litigation. Worse – it will scare off potential volunteers that our movement needs badly. In New York, there is a limit to the liability that our bond can cover, unless the board votes to cover the board member who has been sued under the indemnification bylaw. Again – if you insist on making a change, consider the New York model and leave the bylaw alone.

**Proposed Amendments to Part 708a: Conversion of Insured Credit Unions to Mutual Savings Banks (Note: Visions FCU is not endorsing the conversion from a FCU to a bank, simply commenting on the proposal)**

In the interest of full transparency, we do not object to an independent entity conducting the balloting for a conversion.

**Sec. 708a.104**

We do not agree that additional information about the cost of conversion is needed in the materials or the affect on availability of facilities. There is sufficient information required at this time, and if this change is allowed, you will continue to add to this notice until it becomes unintelligible for the member voting. The voting requirements are so stringent now for a conversion that it is unlikely we will see any other conversions from FCUs to a bank charter.

**Sec. 708a.107**

We have no problems with the requirements of this section so that NCUA can gauge when the conversion might take effect.

**Sec. 708a.113**

This seems completely unworkable, even if an academic question. Some staff time would be needed no doubt in a conversion effort, not unlike a name change or merger. Also, if this entire proposed regulation change is approved, the board of directors could order the staff to assist them under your new regulation **701.4(c) (see above).**

**E. Proposed New Part 708a, Subpart C: Merger of Insured Credit Unions into Banks**

**Sec. 708a.302**

We do not agree that a two step merger should come under the same definition as a one step

merger, unless there is a time period defined between the mergers. That being said, we do not have other objections to this section.

**Sec. 708a.302**

We do not see how it is possible to ensure credit union members are fairly compensated for a loss of membership rights or ownership rights even with valuations as this change would require, even if it has occurred on one occasion. This change should be withdrawn or it will invite litigation should any credit union ever try to convert to a bank again.

**F. Proposed Amendments to Part 708b: Mergers of Federally-Insured Credit Unions with other Credit unions.**

**Sec 708 b.103 .1**

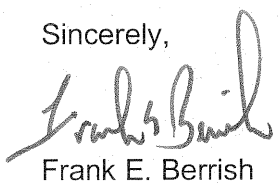
We do not agree that a merging credit union with a higher NWR should necessarily be given share adjustments if merged into another credit union. The value of the additional services and the risk of the surviving credit union of taking on a merger may require the additional capital. NCUA may be limiting healthy mergers by enacting this rule.

**Sec 708 b.103 .2**

We do not have a problem with disclosing to NCUA any known merger related financial arrangements made as part of the merger agreement; however, it must be understood that sometimes adjustments are made after a merger as another credit union's job descriptions are modified to match the surviving credit unions.

Thank you for the opportunity to comment on these important changes to credit union regulations.

Sincerely,



Frank E. Berrish
President/CEO

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cc: Mr. Fred Becker, President – NAFCU
Mr. Dan Mica, President – CUNA
Mr. Bill Mellin, President - CUANY